Supreme Court, U.S.
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No. 96-1822

In The

Supreme Court of the United States

OCTOBER TERM, 1996

LAWRENCE ROSANO,

Petitioner,

- v -

ADELPHI UNIVERSITY, JOSEPH CRAFA, NICHOLAS MANOBIANCO and VILLAGE OF GARDEN CITY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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ARGUMENT

I. INTRODUCTION

As stated in the Petition, Petitioner Rosano is an individual personally and morally opposed to abortion, who was falsely arrested and subjected to excessive force on numerous occasions for engaging in his right to speak freely at Respondent Adelphi University. He was arrested by the Respondent Garden City Police in cooperation with Respondent Adelphi University Security and its Chief of Security, Respondent Nicholas Manobianco. The gravamen of the Petitioner's civil rights claim was a joint action conspiracy under 42 U.S.C. § 1983 between the private actors (Respondent Adelphi University and its Chief of Security,

Nicholas Manobianco) and the Garden City Police consisting of the use of excessive force during the arrest, including beating up and injuring the Petitioner on several occasions.

In his Petition, Petitioner Rosano raised three substantial legal issues for consideration by this Court: (1) highly prejudicial questioning by defense counsel regarding Petitioner's past misdemeanor criminal record and incarceration (which incarceration occurred after the events at Respondent Adelphi University and which did not involve a felony or *crimen falsi* misdemeanor conviction); (2) improper jury instructions requiring Petitioner to prove not a joint action conspiracy between the police and University, but that the University was "clothed with state authority"; and (3) whether giving the jury a copy of the written instructions should be banned in all federal district courts because of the real danger of causing the jury to focus on particular statements out of context. Instead of focusing on these three issues, Respondents Adelphi University, Dean Joseph Crafa and Security Chief Nicholas Manobianco have engaged in a wholesale attack on Petitioner's character, much as they did at trial. The Petitioner is compelled to disburse this smoke screen in this Reply.

II. THE *PERSONA NON GRATA* LETTER AND UNIVERSITY MISCONDUCT

Respondent Adelphi University has argued that the ground for its *persona non grata* letter on March 10, 1986 was Petitioner Rosano's "harassing a coed" on campus (Respondent Adelphi University's Opp., at 3). However, Respondent Adelphi never articulated that reason for exclusion in its *persona non grata* letter issued Petitioner Rosano, even though obligated to do so, as Respondent

Adelphi University was at all times during the incidents in question "open to the public", *People v. Wilson*, 469 N.Y.S.2d 905, 908 (City Ct. Rochester 1983), the absence of which renders the *persona non grata* letter unlawful, *per se*.

Respondent Adelphi University further argues that "[Petitioner] [Rosano] was not a student and therefore not entitled to a hearing on the *persona non grata* letter". (Respondent Adelphi University's Opp., at 5). To the contrary, however, Petitioner Rosano *was* a part time "student" in Respondent Adelphi University's Graduate Scholar's program, paying about $150 for that status, studying Italian II during the day session. Moreover, as an alumnus in the Respondent Adelphi University Paralegal program since 1983, he always thereafter possessed the status as a "student", according to Respondent Adelphi University regulations in force at the time of all incidents in question. As a "student", Petitioner Rosano was entitled to a hearing, *People v. Leonard*, 477 N.Y.S.2d 111, 114-115 (Ct. App. 1984) ["defendant who concededly is not a student . . . at the campus, has identified no 'property' or 'liberty' interest in being on campus grounds that he could be lawfully deprived of only after being accorded a hearing."]

Nevertheless, as an "individual", Petitioner Rosano was entitled to a hearing prior to the *persona non grata* letter being issued under federal law, which Respondent Adelphi University was required to honor as it receives federal assistance. Respondent Adelphi University was obligated to create and enforce its own reasonable regulatory scheme to protect "individuals" from violation of their due process rights. *Starishevsky v. Hofstra University*, 612 N.Y.S.2d 794, 797 (Sup. 1994) (sexual harassment); *Tedeschi v. Wagner*

College, 49 N.Y.2d 652, 660, 427 N.Y.S.2d 760, 764, 404 N.E.2d 1302 (Ct. App. 1980); *Weidemann v. State University of New York College at Cortland et al.*, 592 N.Y.S.2d 99, 100-101 (A.D.3rd Dept. 1992); *Fraad-Wolff v. Vassar College*, 932 F.Supp. 88, 91 (S.D.N.Y. 1996).

Since Petitioner Rosano had a valid license to be on campus during all arrests in question, namely, without a lawful *persona non grata* letter against him, all physical force conceded to at trial in December, 1993, becomes excessive. *Bauer v. Norris*, 713 F.2d 408, 412 (8th Cir. 1983) ["lack of provocation or need to use force would make any use of force excessive."]. Thereby, under 42 U.S.C. 1983, if the *persona non grata* letter is deemed unlawful, Petitioner Rosano wins liability against Respondent Adelphi University and Garden City Police, notwithstanding the verdict. A new trial must be granted.

III. CONCLUSION

The Court should grant the Petition for Certiorari.

Dated:
New Milford, CT.
September 16, 1997

Respectfully submitted,

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